

Home Swimming Pool Safety Reforms



The ACT Government has introduced reforms to home swimming pool safety, with a focus on swimming pool safety barriers. The scheme will commence on 1 May 2024, with a four-year transition period for homeowners to make sure that their swimming pool or spa has a safety barrier compliant with the prescribed safety standards or obtain an exemption.

What is a regulated swimming pool?

A regulated swimming pool is a home swimming pool or spa that is:

- capable of containing water to a depth greater than 30cm; and
- is associated with a residential building such as a house, unit, townhouse or block of apartments.

This includes in-ground and above-ground pools, temporary and permanent pools, wading pools, demountable pools, portable pools, kids' pools and spas.

What is not a regulated swimming pool?

The reforms will not apply to swimming pools in tourist and visitor accommodation such as hotels, motels and caravan parks. Any building that has both a residential and a commercial element will be covered by the scheme.

New rules for inflatable pools

The reforms include a new exclusion from the prescribed safety standards and from aspects of the Building Act for inflatable pools.

An inflatable pool is defined as a pool that can be deflated and inflated, filled with water to a depth greater than 30cm and does not have a filtration system. At the point such a pool has a filtration system it will become a demountable swimming pool and therefore covered by the scheme.

Scheme commencement and transition period

The scheme will commence on 1 May 2024, with a four-year transition period for homeowners to make sure that their swimming pool or spa has a safety barrier compliant with the prescribed safety standards or obtain an exemption.

Making home swimming pools and spas compliant with modern safety standards

Requirement for home swimming pools and spas to have a safety barrier compliant with prescribed safety standards

The scheme requires home swimming pools and spas in the ACT to have a safety barrier compliant with the prescribed safety standards from 1 May 2028 (i.e. the end of the transition period).

For swimming pools and spas built, altered or installed before 1 May 2023, the prescribed safety standard is:

- the current version of the Building Code of Australia; and
- the following two Australian Standards:
 - AS 1926.1 (2012): Swimming pool safety, Part 1: Safety barriers for swimming pools
 - AS 1926.2 (2007): Swimming pool safety, Part 2: Location of safety barriers for swimming pools

The Building Code and these two Australian Standards form the series of standards dealing with safety barriers and location of safety barriers that restrict access by young people to swimming pools and spas and associated areas that present a drowning risk.

For swimming pools and spas built, altered or installed on or after 1 May 2023, the prescribed safety standard is:

- the Building Code of Australia at the time the swimming pool or spa is built, altered or installed; and
- the Australian Standards referenced by the applicable Building Code

This maintains the current regulatory settings for swimming pools and spas and means that new swimming pools and spas will continue to have to comply with the standards as they develop over time.

What changes will need to be made to safety barriers

The changes that need to be made to swimming pool and spa safety barriers will depend on the type of safety barrier that is currently in place and the location of the swimming pool or spa in relation to other buildings, structures and boundary fences on the property.

Any swimming pool or spa built, altered or installed since 1 May 2013 has been legally required to be compliant with the prescribed safety standards. Thus, any work on these swimming pools and spas should be limited.

The main upgrades will be required for swimming pools and spas built, altered or installed before 1 May 2013. Some may require minor upgrades, such as installing a self-closing latch or adding additional height to a fence, while other may require more significant upgrades to become compliant.

The likely changes required for swimming pools and spas built before 1 May 2013 are documented in the [factsheets](https://www.planning.act.gov.au/build-buy-reno/reviews-and-reforms/building-reforms/home-swimming-pool-safety-reforms) which can be found at www.planning.act.gov.au/build-buy-reno/reviews-and-reforms/building-reforms/home-swimming-pool-safety-reforms

Circumstances where compliance with prescribed safety standards is not required

Under the scheme, there are limited specified circumstances where a swimming pool or spa is not required to comply with the prescribed safety standards and the owner of the premises does not need to apply for an exemption.

These are:

- a) A demountable pool that will not be in place for more than three consecutive days.
- b) A spa built, altered or installed before 1 May 2023 which is covered and secured by a lockable child-resistant structure (such as a door, lid, grille or mesh) that:
 - i. is of substantial construction and has no opening through which it is possible to pass a testing apparatus; and
 - ii. is securely fastened by a device that is itself of substantial construction and has no opening through which it is possible to pass a testing apparatus.
- c) A spa built, altered or installed before 1 May 2023 that is located on the balcony of an apartment where self-closing and self-latching doors and/or windows restricts access.

Circumstances where an exemption from compliance may be granted

There are specified circumstances where homeowners or owners corporations can apply for an exemption from compliance with the prescribed safety standards. These circumstances depend on the date the swimming pool or spa was built, altered or installed, and include:

- a) A swimming pool or spa area is unable to physically accommodate a safety barrier compliant with the prescribed safety standard.
- b) Compliance with the safety standard would be reasonably likely to require approval to remove a protected tree.
- c) Compliance would have a significant adverse effect on the heritage significance of a place or object registered under the *Heritage Act 2005*.
- d) Compliance would prevent a person with a disability from accessing the swimming pool or spa.
- e) There are documented plans to demolish the swimming pool or spa within 24 months.

Further detail on these circumstances will be published on the Legislation Register prior to the commencement of the scheme.

If an exemption is granted, an exemption certificate will be issued that contains details of the exemption, any conditions, the date the exemption is issued and the date the exemption expires. Exemption certificates will be issued for a maximum period of 5 years. Where a partial exemption is granted, a compliance certificate will also need to be obtained and lodged with the Government by the end of the transition period, together with the exemption certificate showing the partial exemption.

Compliance certificate framework

The scheme establishes a compliance certificate framework. Compliance certificates will be required to meet disclosure requirements on sale or lease of a property post 1 May 2028 (i.e. the end of the transition period).

A compliance certificate can either indicate a swimming pool or spa is compliant with the prescribed safety standard or is non-compliant. A 'non-compliant' compliance certificate will only be issued in circumstances where remedial work has not been undertaken in the required period or the non-compliance poses a significant and immediate risk to life or safety.

Compliance certificates need to be obtained from an authorised person. The government is currently determining what the requirements will be to be an authorised person. Licensed building surveyors in the ACT will automatically be deemed an authorised person as they currently certify swimming pools or spas are built to the prescribed safety standard.

Where an authorised person determines that a swimming pool or spa is non-compliant with the prescribed safety standard, they must give written notice to the owner of the premises advising that they intend to issue a compliance certificate stating the swimming pool or spa is non-compliant. This written notice will include details of the remedial work required to make the swimming pool or spa compliant and the period in which rectification work must be undertaken to prevent a compliance certificate stating non-compliance being issued. The period to undertake remedial work cannot exceed six months. The authorised person must provide a copy of the written notice to the Construction Occupations Registrar within 14 days of issuing.

An authorised person must inspect rectification work undertaken in response to a written notice prior to issuing a compliance certificate. There may be circumstances where it is appropriate for an authorised person to issue another pool rectification notice (e.g. 90% of the rectification work has been undertaken as required but due to no-fault of the owner of the premises the work does not enable a compliance certificate stating compliance to be issued). In these circumstances the authorised person will inform the Construction Occupations Registrar of the issuing of a further pool rectification notice rather than a 'non-compliant' compliance certificate.

If the rectification work is not undertaken by the rectification date in the written notice, the Construction Occupations Registrar can use existing powers to undertake an inspection of the property to inform whether any regulatory action should be taken if the pool is non-compliant.

In circumstances where the authorised person issues a compliance certificate stating that a pool is non-compliant, the authorised person will be required to lodge the certificate of compliance with the Construction Occupations Registrar within 14 days of issuing the certificate. An authorised person must issue a compliance certificate immediately if the reasons for the non-compliance pose a serious and immediate safety risk and lodge this compliance certificate with the Construction Occupations Registrar as soon as practicable but no more than 7 days after issuing.

Compliance certificate requirements

Swimming pools and spas built, altered or installed before 1 May 2013 will be required to obtain a compliance certificate during the transition period and lodge it with Government within 30 days of issue. Compliance certificates obtained during the transition period will have a validity period of four years, starting from the end of the transition period.

Swimming pools and spas built, altered or installed on or after 1 May 2013 will not be required to obtain or lodge a compliance certificate with Government by the end of the transition period. This does not prevent a compliance certificate being obtained during the transition period.

All compliance certificates issued after the transition period will be valid for five years. Compliance certificates will only be required to be obtained after the transition period when a property is sold or leased. A certificate of occupancy that covers the swimming pool or spa and barrier can be used in place of a compliance certificate where it is less than 5 years old.

Measures to address safety around all home swimming pools

Disclosure of swimming pool and spa compliance status on sale or lease of a property

The scheme imposes requirements for information about the safety standard of a swimming pool or spa to be disclosed on sale or lease of a property.

From 1 May 2024 until 30 April 2028 (i.e. during the transition period), homeowners will be required to inform perspective tenants and purchasers of the new requirements and their potential application to the pool or spa. All homeowners who are selling or leasing a property with pool or spa during this period will be subject to the following disclosure requirements:

- a) Provide the guidance material issued by the Minister under the Building Act on obligations on owners of premises on which a regulated swimming pool is located (this obligation will only apply to properties with a pool or spa that was built, altered or installed prior to 1 May 2023); and
- b) Provide at least one of the following documents:
 - i. a disclosure statement that provides information that is reasonably within the knowledge of the homeowner or owners corporation as to the age of the pool and the status of the pool against the prescribed safety standard
 - ii. a compliance certificate
 - iii. an exemption certificate
 - iv. a certificate of occupancy (that covers the pool and the safety barrier) that is not older than 5 years from when the pool was constructed or substantially altered

From 1 May 2028 (i.e. the end of the transition period), homeowners will be required to provide perspective tenants and purchasers of the property with a valid compliance certificate for their pool or spa. All homeowners who are selling or leasing a property with a pool or spa during this period will be subject to the following disclosure requirements:

- a) Provide at least one of the following documents:
 - i. a compliance certificate
 - ii. an exemption certificate
 - iii. a certificate of occupancy (that covers the pool and the safety barrier) that is not older than 5 years from when the pool was constructed or substantially altered
 - iv. a statutory declaration for a circumstance where compliance is not required

Promoting compliance and addressing safety around swimming pools

The scheme establishes obligations to maintain safety barriers and prevent access to swimming pools and spas when not in use.

From commencement of the scheme on 1 May 2024, all pool owners will be subject to the following obligations, irrelevant of when the swimming pool or spa was approved, built, altered or installed:

- a) Maintain the swimming pool or spa safety barrier as an effective and safe child-resistant barrier.
- b) Ensure that all doors, gates and covers providing access to the swimming pool or spa are kept securely closed at all times when they are not in actual use.